

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

THE GENERAL STORE, INC.,
Petitioner,
v.

No. CV-06-103-FVS

ORDER

RICHARD VAN LOAN, Director of
Industry Operations, Seattle
Field Division, bureau of
Alcohol, Tobacco, Firearms and
Explosives,
Respondent.

THIS MATTER came before the Court on May 18, 2006, based upon the petitioner's application for a preliminary injunction. The petitioner was represented by Mr. Richard E. Gardiner. The respondent was represented by Assistant United States Attorney Rolf H. Tangvald.

BACKGROUND

Richard Van Loan is employed by the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"). He is stationed in the Seattle Field Division, where he serves as the Director of Industry Operations. On or about August 6, 2004, Mr. Van Loan or one of his subordinates sent a Notice of Revocation to The General Store, Inc. ("General Store"). The latter requested an administrative hearing,

1 which was held on January 25, 2005. On February 16, 2006, Mr. Van
2 Loan issued both his "Findings and Conclusions" and a "Revocation of
3 Firearms License." On April 12th, General Store filed a Petition for
4 Judicial Review. 18 U.S.C. § 923(f)(3). On April 17th, General
5 Store asked Mr. Van Loan to stay the order of revocation pursuant to
6 both 18 U.S.C. § 923(f)(2) and 27 C.F.R. § 478.78. He granted a 30-
7 day stay subject to certain conditions. On May 8th, General Store
8 applied for declaratory and injunctive relief. Initially, General
9 Store seeks a ruling that, pursuant to 18 U.S.C. § 923(f)(2), Mr. Van
10 Loan must stay revocation of its dealer's license pending completion
11 of judicial review. In the alternative, General Store seeks a
12 preliminary injunction under Federal Rule of Civil Procedure 65 on
13 the ground that Mr. Van Loan's decision to revoke its license poses
14 serious questions and the balance of hardships tips sharply in its
15 favor.
16

17 **RULING**

18 This matter comes before the Court on an expedited basis. As a
19 result, the Court has not had an adequate opportunity to evaluate
20 General Store's contention that 27 C.F.R. § 478.78 is invalid and 18
21 U.S.C. § 923(f)(2) imposes upon Mr. Van Loan a duty to stay ATF's
22 order of revocation pending completion of judicial review. While the
23 Court is skeptical of General Store's position, the Court declines to
24 address it absent more thorough memoranda from the parties. Instead,
25 the Court turns to Federal Rule of Civil Procedure 65. In the Ninth
26

1 Circuit, a person may obtain a preliminary injunction by
2 ``demonstrating either a combination of probable success and the
3 possibility of irreparable injury or that serious questions are
4 raised and the balance of hardships tips sharply in his favor.'"
5 *William Inglis & Sons Baking Co. v. ITT Continental Baking Co.*, 526
6 F.2d 86, 88 (9th Cir.1975) (quoting *Charlie's Girls, Inc. v. Revlon,*
7 *Inc.*, 483 F.2d 953, 954 (2d Cir.1973) (per curiam)). Having reviewed
8 the materials submitted by the parties, the Court is satisfied that
9 Mr. Van Loan's decision poses serious questions and the balance of
10 hardships tips sharply in General Store's favor. However, the Court
11 is concerned about public safety. Although the Court has decided to
12 issue a preliminary injunction, the Court will not hesitate to
13 reconsider if General Store fails to comply with applicable laws,
14 ordinances, and regulations and its failure to do so jeopardizes
15 public safety.
16

17 **IT IS HEREBY ORDERED:**

18 1. General Store's request for expedited review (**Ct. Rec. 3**) is
19 granted.
20

21 2. General Store's motion to amend (**Ct. Rec. 5**) is granted.

22 3. General Store's application for a preliminary injunction (**Ct.**
23 **Rec. 4**) is granted in part. ATF may not revoke General Store's
24 federal firearms dealer's license prior to this Court's adjudication
25 of General Store's amended Petition for Judicial Review; provided,

26 (a) General Store may not engage in acquisitions or trades of

1 firearms;

2 (b) General store may sell firearms in its inventory as of May
3 18, 2006;

4 (c) ATF may conduct inspections every two weeks; and

5 (d) General Store must comply with applicable laws, ordinances,
6 and regulations.

7 4. The parties are to formulate and file a proposed schedule
8 that will facilitate the prompt adjudication of General Store's
9 amended Petition for Judicial Review.
10

11 **IT IS SO ORDERED.** The District Court Executive is hereby
12 directed to enter this order and furnish copies to counsel.

13 **DATED** this 19th day of May, 2006.

14
15 s/Fred Van Sickle
Fred Van Sickle
16 United States District Judge
17
18
19
20
21
22
23
24
25
26